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U.S. DISTRICT COURT  
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### **FIRST DEFENSE**

COMBINED UNDERWRITERS, pursuant to Rule 12(b)(6), FED. R. CIV. P., states that Third-Party Plaintiffs' First Amended Complaint fails to state a claim upon which relief can be granted.

### **SECOND DEFENSE**

Third-Party Plaintiffs' claims are barred by applicable statutes of limitations and/or periods of limitations.

### **THIRD DEFENSE**

Any action by or on behalf of Combined Underwriters which adversely affected Third-Party Plaintiffs was based upon good and sufficient cause and Combined Underwriters' dealings with Third-Party Plaintiffs were fair, just, non-discriminatory, and in good faith.

### **FOURTH DEFENSE**

Third-Party Plaintiffs have failed to exhaust all administrative remedies.

### **FIFTH DEFENSE**

Combined Underwriters would show that Third-Party Plaintiffs' claims are pre-empted, in whole or in part, by the Employment Retirement Income Security Act (ERISA), Title 29 U.S.C.A. §1001, et seq.

### **SIXTH DEFENSE**

By way of response to Third-Party Plaintiffs' First Amended Complaint, COMBINED UNDERWRITERS would respectfully show as follows:

### **RESPONSE TO THIRD-PARTY DEFENDANT “HEALTH CARRIERS”**

1-56. COMBINED UNDERWRITERS admits the averment in paragraphs 2 and 11 that it is an insurance company doing business in the State of Texas, and that it has been served with process with the Third-Party Complaint in this action. COMBINED UNDERWRITERS is without knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in paragraphs 1-56, and therefore denies the same.

57. There is no need to admit or deny the allegation in Paragraph 57.

### **RESPONSE TO PLAINTIFFS’ ALLEGATIONS**

58. Without admitting the substance of any such allegations, COMBINED UNDERWRITERS admits the allegations in paragraph 58 that Plaintiffs’ Original Petition filed herein against Defendants/Third-Party Plaintiffs makes many vague, broad and wide ranging allegations and that Plaintiff alleges that Defendants/Third-Party Plaintiffs mishandled his patient accounts and the accounts of other persons similarly situated in the respects listed in sub-paragraphs A, B, C, and D of paragraph 58 of the First Amended Third-Party Complaint, and that Plaintiff seeks to sue not only for himself, but also for a class of persons and that Defendants/Third-Party Plaintiffs have denied all allegations of Plaintiffs. COMBINED UNDERWRITERS is without sufficient information or knowledge to admit or deny that “Defendants/Third-Party Plaintiffs have denied all allegations of Plaintiffs” and therefore denies same.

### **RESPONSE TO ROLE OF “HEALTH CARRIERS”**

59. Upon information and belief, and insofar as they pertain to COMBINED UNDERWRITERS, COMBINED UNDERWRITERS admits the allegations in the first, second, and last sentences of

paragraph 59. However, COMBINED UNDERWRITERS is without knowledge or information sufficient to form a belief as to the truth of the remaining averments about COMBINED UNDERWRITERS or any other averments about the other health carriers in paragraph 59, and therefore denies the same.

**RESPONSE TO CONTRIBUTION / INDEMNITY CLAIM**

60. The allegations set forth in paragraph 60 of the First Amended Third-Party Complaint are denied.

**RESPONSE TO REQUEST FOR DECLARATORY RELIEF**

61. COMBINED UNDERWRITERS is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 61, and therefore denies the same.

**RESPONSE TO PRAYER**

62. Combined Underwriters denies that Third-Party Plaintiffs are entitled to the relief sought in paragraph 62 of the First Amended Third-Party Complaint.

63. Combined Underwriters denies any and all allegations not expressly admitted herein.

**AFFIRMATIVE DEFENSES**

64. One or more of Defendants/Third-Party Plaintiffs' claims are pre-empted by the *Employee Retirement Income Security Act of 1974*, 29 U.S.C. §1001, *et seq.* Further, on information and belief, some or all of the claims of the Plaintiffs' putative class members are pre-empted by ERISA because they relate to benefits allegedly due under one or more Employee

Welfare Benefit Plans governed by ERISA, for which Defendant/Third-Party Plaintiffs are seeking contribution and indemnity.

65. Plaintiffs' action, for which Defendant/Third-Party Plaintiffs are seeking contribution and indemnity, is not properly maintainable as a class-action as the requirements for a class-action are not met.

66. To the extent that one or more of the Plaintiffs' putative class-members have failed to exhaust their administrative remedies in connection with their claims for benefits allegedly due under an Employee Welfare Benefit Plan governed by ERISA, for which Defendants/Third-Party Plaintiffs are seeking contribution and indemnity, Plaintiffs' and Defendants/Third-Party Plaintiffs' claims herein must be dismissed.

67. Upon information and belief, one or more of the Plaintiffs' putative class members have assigned their rights to benefits under their Employee Welfare Benefit Plan, governed by ERISA, to one or more of the Defendants/Third-Party Plaintiffs, and therefore such Plaintiffs' putative class members lack standing to seek recovery of the same from Defendants/Third-Party Plaintiffs, and Defendants/Third-Party Plaintiffs are precluded from seeking contribution or indemnity for the same from Third-Party Defendants.

68. Plaintiffs' and Defendants/Third-Party Plaintiffs' claims herein fail to state a claim upon which relief can be granted and therefore should be dismissed.

69. To the extent that any agreements between Defendants/Third-Party Plaintiffs' and COMBINED UNDERWRITERS contained an arbitration clause, Defendant/Third-Party Plaintiffs' claims herein are premature and fail to state a claim.

70. Plaintiffs' and Defendants/Third-Party Plaintiffs' claims are barred by the applicable statute of limitations and should be dismissed.

71. Plaintiffs' and Defendants/Third-Party Plaintiffs' claims herein are barred by the doctrines of waiver, laches and estoppel and should be dismissed.

72. Defendants/Third-Party Plaintiffs' claims are barred by the doctrine of accord and satisfaction.

73. Any decision regarding Plaintiffs' or Defendants/Third-Party Plaintiffs' claims for benefits was not an abuse of discretion.

74. Defendants/Third-Party Plaintiffs' claims against COMBINED UNDERWRITERS are barred by the doctrines of estoppel, waiver, laches and unclean hands.

#### **COUNTER-CLAIM**

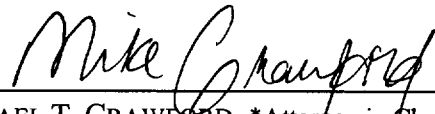
75. This Counter-Claim is asserted against Defendant/Third-Party Plaintiffs who have already appeared herein.

76. COMBINED UNDERWRITERS seeks to recover from Defendants/Third-Party Plaintiffs its reasonable and necessary attorneys' fees and costs of court expended in the defense of this action, pursuant to 29 U.S.C. §1132(g).

**PRAYER**

WHEREFORE, PREMISES CONSIDERED, COMBINED UNDERWRITERS LIFE INSURANCE COMPANY respectfully prays that (1) this Court deny all relief requested by Third-Party Plaintiffs; (2) Third-Party Plaintiffs and Plaintiffs take nothing herein; and (3) COMBINED UNDERWRITERS LIFE INSURANCE COMPANY have and recover its reasonable and necessary attorneys' fees and costs of court expended in the defense of this action. COMBINED UNDERWRITERS LIFE INSURANCE COMPANY also seeks such other and further relief, at law or in equity, both general and special, to which it may show itself to be justly entitled.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify on this 16<sup>th</sup> day of October, 2000, a true and correct copy of the foregoing instrument was placed in the United States Certified Mail, Return Receipt Requested, with proper postage affixed thereon, to:

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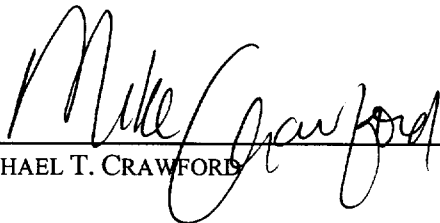
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